

Exhibit OO

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
METRO FUEL, LLC,

ORIGINAL

Case No.

Plaintiff,

07-CV-8244

- against -

CITY OF NEW YORK,

Defendant.
-----x

May 15, 2008

10:22 a.m.

75 Rockefeller Plaza

New York, New York 10019

DEPOSITION of EDWARD FORTIER, testifying
on behalf of THE CITY OF NEW YORK, the Defendant
in the above entitled matter, taken pursuant to
Consent, before a Notary Public of the State of
New York.

RAYVID REPORTING SERVICE, INC.

(212) 599-3642

1 EDWARD FORTIER

2 Q I am hoping you can help me
3 understand the difference between a directly
4 illuminated sign and a sign with indirect
5 illumination.

6 Let me cut to the chase by asking
7 you whether you believe that my client's signs,
8 which are internally illuminated light boxes, if
9 you will, would be considered to be directly
10 illuminated or signs with indirect illumination?

11 A Those would be directly illuminated.

12 Q Why would they not qualify as signs
13 with direct illumination?

14 A Because the definition of
15 "illuminated signs" would say that it gives forth
16 artificial light; whereas, indirect would tell us
17 that it is derived from an external source, so
18 that the signs are illuminated from a light
19 fixture away from the sign itself.

20 Q Let me break it down in parts,
21 because there are a couple of different things
22 that confuse me.

23 First, let's talk about artificial
24 light or an artificial source. What kinds of
25 illumination of signage would there be, other than

EDWARD FORTIER

artificial?

Isn't all sign illumination

artificial?

A Well, sunlight would be natural.

Q And all signs --

A Otherwise, everything, correct.

Q You agree with me that all signage is naturally lit, to the extent that the sun is out, and not naturally lit to the extent that it's dark?

A Correct.

Q So, given that, what significance does the word "artificial" have in Zoning Resolution's definition of an illuminated sign?

A I couldn't speak to why they use the term "artificial light." I would suppose just to distinguish it from a sign that's otherwise viewable during the day.

Q The other piece that confuses me is the word "external."

What does it mean to say that a light source is, quote, unquote, external with respect to a sign?

A I think the distinction here is

1 EDWARD FORTIER

2 external as opposed to internal, a sign that's lit
3 from within; so that the light projects forward as
4 opposed to a light fixture that stands apart from
5 a sign.

6 So, indirectly, by reflecting a
7 light off of a sign illuminates it.

8 Q When we speak of "signs," we're
9 generally referring to pictorial representations,
10 right?

11 A It could be text or pictorial.

12 Q When we talk about a "sign
13 structure," we're talking about the structure that
14 supports and facilitates the displaying of a
15 textorial or pictorial representation?

16 A Correct.

17 Q I think I understand how
18 illumination could be internal or external
19 relative to a sign structure.

20 I'm not sure I understand how
21 illumination can be internal or external with
22 respect to a sign, and I'm hoping that you can
23 help me understand that.

24 A Well, it doesn't -- the definition
25 says "a sign with indirect illumination," so that

1 EDWARD FORTIER

2 the illumination is actually a separate element.

3 As you described, there is the
4 structure, there is the sign itself. Here, the
5 light comes from within -- I'm not sure the best
6 way to describe it. It seems, to me, fairly
7 straightforward within the definition.

8 Q Let me try to come at this a
9 different way.

10 Can you give me an example of the
11 kind of sign that would be a sign with indirect
12 illumination?

13 A Most of the arterial signage that we
14 see is indirect, in that there are large fixtures
15 attached to the structure that project light onto
16 the sign, and you then see the sign as
17 illuminated.

18 Many of the advertising signs
19 throughout the City are indirectly illuminated.
20 To contrast, if you look in areas such as Times
21 Square where the signs give forth light
22 internally, there is no external fixture
23 reflecting light upon them. Those would be
24 illuminated signs.

25 Q You're generally familiar, aren't

EDWARD FORTIER

you, with the fact that my client's signs are boxes that contain posters with light bulbs behind the posters?

A Yes.

Q If the same boxes had light bulbs in front of the posters rather than behind them, would they then constitute signs with indirect illumination?

A Correct.

Q You would agree with me, wouldn't you, that all else equal, the same light box with the same posters and the same light bulbs would be at least as bright and at least as visible if the light bulbs were in front of the poster than if the light bulbs were behind the poster?

A No.

Q Why is that?

A Because, as the definition it says, it gives forth light, projects light forward, which, in my perception, results in a more brightly illuminated sign in the immediate area as well is illuminated by the sign; whereas, again, in my experience, it seems the indirectly illuminated signs illuminate only the sign, not

1 EDWARD FORTIER

2 the area beyond it.

3 Q You would agree with me that,
4 generally speaking, the Zoning Resolution is more
5 tolerant to signs with indirect illumination than
6 it is with directly illuminated signs, all else
7 equal?

8 A Yes.

9 Q And the reason for that difference
10 in tolerance is that the City has a specific
11 concern about light rays interfering with people's
12 enjoyment of the City?

13 A Yes.

14 Q You would agree with me that the
15 light rays emanating from the light bulbs in my
16 client's sign would be more intrusive from that
17 perspective if the light bulbs were located in
18 front of the sign rather than behind the sign?

19 A No.

20 Q I know you're not a physicist nor am
21 I a physicist.

22 As a matter of common sense,
23 wouldn't you agree with me that the light
24 emanating from my client's signs is, at least to
25 some minimal degree, dimmed by the poster?

1 EDWARD FORTIER

2 A It would seem, as opposed to no
3 poster in place, yes.

4 Q And so, why is it that you can't
5 also agree with me that if the light bulbs were
6 located in front of the poster rather than behind
7 them, they would be brighter from the vantage
8 point of the street?

9 A Because the light is directed, in
10 the case of direct illumination, toward the
11 street. Indirect illumination is aimed towards
12 the sign, is directed to the sign, so that the
13 sign is illuminated maybe, at most, a portion of
14 the wall on which it's located, but the light is
15 not projected forward towards the street.

16 Q You would agree with me, generally,
17 that some direct illumination is directed towards
18 the street and some direct illumination is not
19 directed towards the street, it depends on the
20 circumstances, right?

21 A If it's located at street level, I
22 don't see how it's avoidable. If the sign is
23 targeting street level, the light must be
24 projected towards the street. I don't see how it
25 could be otherwise.

1 EDWARD FORTIER

2 Q Let's focus specifically on my
3 client's panel signs.

4 My client's panel signs, as they
5 actually exist on the streets, have light bulbs
6 behind the posters, correct?

7 A Correct.

8 Q Those light rays only reach the
9 street after passing through the poster
10 advertisement, right?

11 A Correct.

12 Q The way you're using these terms, do
13 you understand that to be light that's directed
14 towards the street?

15 A Correct.

16 Q Viewed that way, isn't all
17 illumination, whether it's considered direct or
18 indirect under the Zoning Resolution, directed
19 towards the street, because light rays can always
20 reach the street?

21 MS. NEUFELD: Objection.

22 A The light -- as I've said, if the
23 light is directed towards the sign, the rays are
24 not towards the street.

25 You can direct a light in one

EDWARD FORTIER

direction or the other. Either it emanates from the sign towards the street or emanates towards the sign on the wall.

Q There are certain kinds of light rays that are directed by human beings, such as a flashlight, that you might point in one direction or another, right?

A Correct.

Q And there are certain kinds of light rays that are not directed in any particular direction, such as the proverbial light bulb hanging naked in a prisoner interrogation room, right?

A Correct.

Q There are times when an advertising sign illumination is directed in the sense that the illumination emanates from a flashlight type lighting, that is purposely oriented towards the sign?

A Correct.

Q And, in theory, a sign could be illuminated by the type of naked light bulb that happens to emanate light towards the sign, but also emanates light equally in all directions.

1 EDWARD FORTIER

2 A Okay.

3 Q You are aware, aren't you, that my
4 client's panel signs are illuminated by
5 fluorescent light bulbs that aren't directed at
6 any particular direction, right?

7 A They are directed to exit the box,
8 which they are located towards the sign.

9 Q You would agree with me that the
10 only way in which they are directed, as you
11 describe, is in the sense that the back of the
12 sign and the sides of the sign are opaque?

13 A Correct.

14 Q The direction that you're describing
15 is the result of the fact that the backs and the
16 sides are opaque and the front are not, and not
17 from the fact that the light bulbs are oriented in
18 any particular direction?

19 A I couldn't speak as to the
20 orientation of the light bulbs.

21 I can speak as to the result, that
22 all light projects from that box, which is
23 contained forward towards the street.

24 Q So, you would agree with me, in
25 order to determine whether an illumination source

1 EDWARD FORTIER

2 is directed to the street, you look to whether or
3 not rays of light reach the street as an effect,
4 rather than whether rays of light were
5 purposefully directed towards the street?

6 A There is no -- there was no
7 subjective standard. We simply looked to whether
8 the lighting is internal, to be projected forward
9 or set off from the sign and directed towards the
10 sign.

11 As to rays or degree of illumination
12 or the ultimate effect, we don't look to that. We
13 look to where the fixtures are located, behind the
14 sign, projecting forward or in front of the sign
15 projecting light onto it.

16 Q You would agree with me that
17 advertising signs are permitted in C8 and in
18 manufacturing districts subject to certain
19 restrictions?

20 A Yes.

21 Q You would agree with me that in none
22 of those districts are directly illuminated signs
23 permitted?

24 A I don't believe so.

25 Q Is it your testimony that to the

1 EDWARD FORTIER

2 you're aware of, looked into this question?

3 MS. NEUFELD: Objection.

4 A As it relates to particularly signs
5 on subway stairs, no, I'm not aware.

6 Q Is there any other way in which you
7 think this might have been looked into?

8 A We have more recently with the Law
9 Department in conjunction with counsel --

10 MS. NEUFELD: Are you aware of
11 privilege when you're answering the
12 question?

13 THE WITNESS: Yeah.

14 A We have considered the issue of MTA
15 signage as it relates to arterial signs.

16 Q To your knowledge, nobody at the
17 City has considered the issue relating to the
18 MTA's urban panels?

19 A No.

20 MR. HECKER: Let's mark it as 19.

21 (The above described document was
22 marked Plaintiff's Exhibit 19 for
23 identification, as of this date.)

24 A Mr. Fortier, Exhibit 19 is a
25 two-page document that's not Bates stamped. At

Exhibit PP

THOMAS WARGO

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ORIGINAL

-----x

METRO FUEL, LLC,

Case No.

Plaintiff,

07-CV-8244

- against -

CITY OF NEW YORK,

Defendant.

-----x

May 9, 2008

10:13 a.m.

75 Rockefeller Plaza

New York, New York 10019

DEPOSITION of THOMAS WARGO, testifying
on behalf of THE CITY OF NEW YORK, the Defendant
in the above entitled matter, taken pursuant to
Consent, before a Notary Public of the State of
New York.

RAYVID REPORTING SERVICE, INC.

(212) 599-3642

THOMAS WARGO

1 THOMAS WARGO

2 Division?

3 A No.

4 Q What does the Urban Design Division
5 do?

6 A They do urban design work. For
7 instance, now their big job is the Moynihan
8 station, the new Moynihan rail station.

9 Q Is Jeff Sugarman part of the Urban
10 Design Division?

11 A Yes.

12 Q Is Jeff Sugarman the head of the
13 Urban Design Division?

14 A No.

15 Q Who is the head?

16 A Alexandros Washburn.

17 Q Is the Urban Design Division the
18 division within DCP that has primary
19 responsibility for street furniture?

20 A Yes. The two divisions used to be
21 linked several years ago and they were split apart
22 two years ago.

23 Q When did you become the head of the
24 Zoning Division?

25 A In November of 2006.

THOMAS WARGO

1 THOMAS WARGO

2 the Penn Center sub district, notwithstanding its
3 general neighborhood character and aesthetic
4 concerns about advertising signs?

5 A Yeah, yes.

6 MR. HECKER: It's 1:00. Do you mind
7 pressing on for a few more minutes before
8 we take a break?

9 THE WITNESS: Not at all.

10 MR. HECKER: Mark this as Exhibit 6.

11 (The above described document was
12 marked Plaintiff's Exhibit 6 for
13 identification, as of this date.)

14 Q Mr. Wargo, Exhibit 6 is an excerpt
15 from the Zoning Resolution Section 12-10, which
16 contains the definitions of certain terms, and I
17 excerpted the sections on defining advertising
18 sign, flashing sign, illuminated sign and a sign
19 with an indirect illumination.

20 Can you take a look at the
21 definition of "Illuminated Sign," which is labeled
22 at the bottom of the first page and begins at the
23 top of the second page; and also take a look at
24 the definition of a "Sign with indirect
25 illumination."

THOMAS WARGO

1 THOMAS WARGO

2 My question is, what is a "sign with
3 indirect illumination," because I don't understand
4 the definition. I'm wondering if you do.

5 A Well, I don't deal with sign
6 regulations on a day-to-day basis. So, I used to
7 direct all these answers to someone else in the
8 office who was our sign expert, but he's retired;
9 but, to me, a sign with indirect illumination is
10 a, say, for instance a billboard that has a
11 spotlight shown on it.

12 Q I see. And so, you're generally
13 familiar with the bus shelter panel signs,
14 correct?

15 A Yes.

16 Q You're generally familiar that those
17 signs are boxes with a poster inside and internal
18 illumination in the boxes?

19 A Yes.

20 Q Would you consider those signs to be
21 signs with indirect illumination or would those be
22 directly illuminated signs?

23 A They would be directly illuminated.

24 Q What is it about a box with a bulb
25 in it that is different from a billboard with a

THOMAS WARGO

1 THOMAS WARGO

2 spotlight on it?

3 A Well, again, I'm not a sign expert
4 and I'm not a lighting expert, and I don't begin
5 to say that I know anything about lighting
6 science, but I would think that a sign with --
7 that is lit from behind, lit from within, is going
8 to appear to be brighter, more intense. I
9 don't -- I can't say that I know that for a fact.

10 Q I know you are not a sign expert.

11 Do you know for a fact that those
12 signs are considered to be directly illuminated
13 signs or is that a guess?

14 A It's a guess.

15 Q Who would be the person at DCP with
16 the most knowledge about this issue who is not
17 retired?

18 A We're running out of people. I
19 guess, by default it would have to be me; but I
20 would consult with the Department of Buildings, if
21 I were asked a technical question like this. I
22 would consult with the Department of Buildings.

23 Q Do you know who Ed Fortier is?

24 A Yes.

25 Q Is he who you would consult with?

THOMAS WARGO

1 THOMAS WARGO

2 A Yes.

3 Q If he gave you an answer that you
4 thought made sense, would you be inclined to make
5 that answer the policy of DCP?

6 A Well, we don't really enforce zoning
7 regulations at the Department of Planning,
8 Department of Buildings does. They not only
9 enforce the rules, they interpret the rules. At
10 Planning we can only give guidance.

11 Q Fair enough.

12 Let's go back to that interrogatory
13 response that we've been looking at from Exhibit
14 number 1 on Page 13.

15 The first full paragraph on Page 13
16 says, "Directly illuminated advertising signs are
17 not permitted in C8, M1, M2 and M3
18 districts because in contrast to C6-5, C6-7
19 and C-7 districts, these districts are
20 located in areas throughout the City, often
21 in close proximity to residential
22 districts."

23 Do you see that?

24 A Yes.

25 Q There is another reason in the next

THOMAS WARGO

1 THOMAS WARGO

2 sentence that we'll talk about in a minute, but I
3 want to talk about them separately.

4 My question is, do you agree that
5 the fact that "C8, M1, M2 and M3 districts are
6 located in areas throughout the City, often in
7 close proximity to residential districts" is one
8 of the reasons why directly illuminated
9 advertising signs are not permitted in those
10 districts?

11 A Yes.

12 Q Do you also agree that the fact that
13 directly illuminated signs may have negative
14 effects on nearby non commercial manufacturing
15 uses within C8, M1, M2 and M3 districts is another
16 reason why illuminated advertising signs are not
17 allowed in those districts?

18 A By "non commercial manufacturing
19 uses," it's not clear what they are referring to.

20 Q Let's come back to that one.

21 Let's focus on the first sentence,
22 which you agreed with, correct?

23 A Yes.

24 Q What is it about the fact that C8,
25 M1, M2 and M3 districts often are in close

THOMAS WARGO

1 THOMAS WARGO

2 proximity to residential districts that makes
3 directly illuminated advertising signs
4 inappropriate in those districts?

5 A Well, if the directly illuminated
6 signs are, as I expect, brighter, they would be
7 more visible from further away.

8 Q So, the concern is that directly
9 illuminated advertising signs in C8, M1, M2 and M3
10 districts could be visible to adjacent residential
11 districts, whereas non illuminated advertising
12 signs in those districts wouldn't be visible to
13 adjacent residential districts?

14 A It also, I think, has to do with the
15 intensity of the visibility.

16 Q So, the mere fact that advertising
17 signs in C8, M1, M2 and M3 districts may be
18 visible to adjacent residential districts is not
19 the problem; the problem is the intensity of that
20 visibility?

21 A Yes. There are rules that restrict
22 the sizes and the heights; and so, if that's
23 equal, the only difference then would be the
24 intensity of the illumination.

25 Q You would agree with me that it

THOMAS WARGO

1 THOMAS WARGO
2 would not be appropriate to restrict directly
3 illuminated advertising signs in those portions of
4 C8, M1, M2 and M3 districts that are not visible
5 from adjacent residential districts?

6 A If they are not visible?

7 Q Correct.

8 A Well, how would you know?

9 Q Well, let me ask you that question.
10 How do you know there are any
11 portions of C8, M1, M2 or M3 districts that have
12 advertising signs that would be visible to
13 adjacent residential districts, if the signs were
14 directly illuminated?

15 A Well, I think whether it's directly
16 illuminated or indirectly illuminated doesn't
17 affect whether you would be able to see it.

18 Q Let me back up then.

19 The concern we're talking about is
20 that advertising signs will be visible and perhaps
21 visible with a certain intensity in residential
22 districts?

23 A From residential districts.

24 Q In other words, the reason that
25 we're discussing restricting the illumination

THOMAS WARGO

1 THOMAS WARGO

2 level of advertising signs in C8, M1, M2 and M3
3 districts is because of the concern that you will
4 be able to see those advertising signs from
5 adjacent residential districts?

6 A Yes.

7 Q How do you know that there are any
8 areas of the City in which you could sit in a
9 residential district and see a directly
10 illuminated advertising sign or even an indirectly
11 illuminated advertising sign from an adjacent C8,
12 M1, M2, and M3 district?

13 Has anyone looked at that?

14 A Yes, these are widely mapped
15 throughout the City, and widely mapped to
16 residence districts.

17 Q You certainly know that there are
18 large portions of C8, M1, M2 and M3 districts with
19 advertising signs that would not be visible to any
20 portions of any adjacent residential districts,
21 even if they were directly illuminated?

22 A There is certainly going to be some
23 M districts where a sign is not going to be
24 visible from a residence district. I concede
25 that.

THOMAS WARGO

1 THOMAS WARGO

2 Q The City hasn't tried to identify
3 those portions of C8 or M districts where this
4 would be a problem versus those portions of C8 or
5 M districts which this would not be a problem?

6 A To my knowledge, it has never done
7 that study.

8 Q If you were attempting to allow the
9 highest degree of advertising signs that did not
10 interfere with the City's concerns, wouldn't it
11 make more sense to impose location or spacing
12 requirements on directly illuminated advertising
13 signs in C8, M1, M2 and M3 districts rather than
14 completely banning direct illumination in those
15 districts?

16 A Well, it would be very difficult to
17 write a zoning rule that would lift the ban on
18 illuminated signs in manufacturing districts, if
19 they were not visible from a residence district.
20 That would be a very difficult rule to apply, a
21 very difficult rule to enforce.

22 Q It wouldn't be difficult, would it,
23 to study how far signs generally have to be when
24 directly illuminated for someone to see them?

25 A Well, it could be miles.

THOMAS WARGO

1 THOMAS WARGO

2 Q How could it be miles?

3 A If you're at a high point, I can
4 look across -- I can look across New Jersey and
5 see illuminated signs.

6 Q Fair enough. Let me ask you a
7 different question.

8 Given the restrictions that exist
9 for advertising signs in C8, M1, M2 and M3
10 districts, such as size and height restrictions,
11 it wouldn't be hard to study, would it, how far
12 one has to be away from signs that are subject to
13 those restrictions for the sign to be seen if
14 directly illuminated?

15 A But it still could be miles.

16 Q How could it be miles to see a sign
17 that's subject to M1 restrictions?

18 A Even if it's no higher than forty or
19 fifty-eight feet, you can have a vista that's
20 unimpeded for miles.

21 Q Are you aware of any such vistas in
22 the City of New York?

23 A Look across New Jersey and you'll
24 see signs that are quite low.

25 Q Is the City of New York interested

THOMAS WARGO

1 THOMAS WARGO

2 in protecting New Jersey residents --

3 A No, but --

4 Q Let me finish the question.

5 Is the City of New York interested
6 in protecting New Jersey residents from aesthetic
7 impacts of New York City signs on New Jersey?

8 A No.

9 Q What actual examples can you think
10 of that would implicate actual concerns of
11 New York City of advertising signs in New York
12 City that are visible from miles away?

13 A I could be in Manhattan looking at
14 Long Island City.

15 Q And you're familiar, generally, with
16 the restrictions on arterial advertising signs in
17 New York City, right?

18 A Yes.

19 Q You understand that those
20 restrictions generally limit or prohibit
21 advertising signage that is both within a given
22 proximity to and visible from an arterial highway?

23 A Yes.

24 Q And there are similar restrictions
25 with respect to public parks, right?

THOMAS WARGO

1 THOMAS WARGO

2 A Yes.

3 Q With respect to some public parks,
4 there are restrictions or prohibitions on placing
5 advertising signs within a given distance of those
6 parks, but only if they are in view of those
7 parks?

8 A Yes.

9 Q Why couldn't the City allow directly
10 illuminated advertising signs in those portions of
11 C8, M1, M2 and M3 districts that are not visible
12 from adjacent residential districts?

13 A It could have adopted a similar
14 rule, but for whatever reason it decided not to.
15 I was not part of the study.

16 Q There is no reason why the City
17 couldn't adopt that rule today?

18 A If it was sensible.

19 Q Would it be sensible?

20 A I don't know. I haven't studied it.

21 Q You told me one of the reasons why
22 directly illuminated advertising signs are not
23 permitted in C8, M1, M2, and M3 districts is
24 because of the concern that those directly
25 illuminated signs could be visible to closely

THOMAS WARGO

1 THOMAS WARGO

2 approximate adjacent residential districts, right?

3 A I also said that they were of
4 greater -- I believe them to be a greater
5 intensity than the other signage.

6 Q Would you agree with me that if the
7 City allowed directly illuminated advertising
8 signs in those portions of C8, M1, M2 and M3
9 districts that were not visible from adjacent
10 residential districts, but didn't allow directly
11 illuminated advertising signs in C8, M1, M2 and M3
12 districts that are visible from adjacent
13 residential districts, that that would alleviate
14 the concern?

15 A It could, yes.

16 Q It could or it would?

17 A Again, I'm not sure how you would
18 make the determination about being visible.

19 Q How do you make the determination
20 about being visible from a public park or arterial
21 highway?

22 A That's a question I would direct to
23 Ed Fortier.

24 Q Would you agree with me that Ed
25 Fortier has a team of inspectors that go out and

THOMAS WARGO

1 THOMAS WARGO

2 make judgments, right?

3 A They deal with assigned regulations
4 on a general basis.

5 Q They issue tickets to signs located
6 in view of arterial highways and public parks
7 based on judgments about whether or not those
8 signs are, in fact -- whether those signs are
9 located in view of arterial highways and public
10 parks?

11 A Right.

12 MS. NEUFELD: Objection to form.

13 Q If there is some basis to disagree
14 with the judgment that those signs are within view
15 of public parks or arterial highways, the
16 landowner or outdoor advertising company is free
17 to contest the violation, right?

18 A Yes.

19 Q Is there any reason why that system
20 wouldn't work for directly illuminated signs in
21 C8, M1, M2, M3 vistas?

22 A There is no reason for me to
23 believe, in theory, it cannot work.

24 Q I'll take that.

25 You testified that you are generally

THOMAS WARGO

1 THOMAS WARGO

2 familiar with the 4x4 poster advertisements that
3 are on bus shelters?

4 A Yes.

5 Q And I doubt that you've measured the
6 illumination level with a light meter, but would
7 you say you're generally familiar within a
8 colloquial way with the light generated when
9 you're walking down the street, as a citizen?

10 A Yes.

11 Q Are those the kind of signs that the
12 City is concerned about in terms of projecting
13 light in adjacent residential districts?

14 A I believe so.

15 Q You testified before that the
16 intensity of the lighting matters?

17 A Yes.

18 Q You testified before that the size
19 matters?

20 A Yes.

21 Q You also testified that the vista
22 matters?

23 A Yes.

24 Q I'm asking you whether you think a
25 4x6 box that's illuminated in approximately the

THOMAS WARGO

1 THOMAS WARGO

2 manner that the bus shelter advertisements are
3 illuminated would realistically be able to cause
4 concerns in terms of being visible from adjacent
5 residential districts?

6 MS. NEUFELD: Objection to form.

7 MR. HECKER: I'll rephrase it.

8 Q We're talking about C8, M1, M2 and
9 M3 districts, right?

10 A Yes.

11 Q We're talking about the difference
12 between illuminated and non illuminated signs in
13 those districts?

14 A Yes.

15 Q We're talking about the concern that
16 illuminated signs might be visible to adjacent
17 residential districts in a way that non
18 illuminated signs might not be, right?

19 A Yes.

20 Q I'm asking you, does that concern
21 apply to the City's bus shelter ads that are
22 located in C8, M1, M2 and M3 districts?

23 A No.

24 Q Why not?

25 A Because it's a different realm in

THOMAS WARGO

1 THOMAS WARGO

2 the City streets.

3 Q I understand your testimony that a
4 street is different.

5 I'm wondering if those signs were
6 visible from adjacent residential districts, that
7 wouldn't bother you, because they are on the
8 streets?

9 A Correct.

10 Q Do you have any reason to believe
11 that those signs tend to be visible from adjacent
12 residential districts?

13 A Do I have concerns?

14 Q Do you have any factual basis to
15 believe that bus shelter signs located in C8, M1,
16 M2 or M3 districts would be visible from adjacent
17 residential districts, given their size and --

18 A They could be visible from adjacent
19 residential districts.

20 Q You are talking about residential
21 districts that are across the street?

22 A Across the street, yes.

23 Q Excluding those signs that are
24 located on the borders of residential districts
25 M1, M2, M3 or C8 districts, is it fair to say that

THOMAS WARGO

1 THOMAS WARGO
2 the bus shelter signs located in those districts
3 are not visible from adjacent districts?

4 A Yes.

5 Q The second sentence in the
6 interrogatory says, "In addition, directly
7 illuminated signs may have negative effects
8 on nearby non commercial manufacturing
9 uses within these districts."

10 I want to know if you agree with
11 that, and I think you said before there might be
12 some reason that you don't?

13 A Could you repeat that.

14 Q If you could read the second
15 sentence of the first full paragraph on Page 13,
16 of Exhibit 1, which begins, "In addition," and
17 tell me whether you agree with that.

18 I thought you might have said
19 earlier that there is something about the word
20 "non commercial" that you disagreed with.

21 MR. HECKER: Off the record.

22 (Discussion off the record.)

23 MR. HECKER: Back on the record.

24 Q I have a new question.

25 Having discussed this with

THOMAS WARGO

THOMAS WARGO

Ms. Neufeld, it is possible that the word "non" in that sentence is a typo.

Let's assume for the sake of argument that that word "non" is a typo and it shouldn't be there, and Ms. Neufeld is not committing to that position.

My question is, do you agree, in addition to the concerns we discussed, directly illuminated signs may have negative effects on nearby commercial/manufacturing uses within C8, M1, M2 and M3 districts?

A Yes.

Q And what kind of negative effects are we talking about?

A Again, it's a matter of context. A lot of these manufacturing districts having evolved into more retailer business districts; so, it's appropriate then that the advertising signage be regulated.

Q What exactly are the negative effects that you say flow from the illumination of advertising signs in C8, M1, M2 and M3 districts?

A The intensity of light.

Q And how does the intensity of the

THOMAS WARGO

1 THOMAS WARGO

2 light affect, in a negative way, commercial or
3 manufacturing uses in these kinds of districts?

4 A It's the public perception in terms
5 of the -- you have the aesthetics issue, you also
6 have the neighborhood context issue. The
7 advertising -- the intensity of the advertising
8 sign lends a whole different character to the
9 street.

10 Q You testified that you don't believe
11 that bus shelter advertising in these districts is
12 problematic, even though those ads are directly
13 illuminated, correct?

14 A Correct.

15 Q That belief flows from the fact that
16 these bus shelter ads are on the streets and the
17 sidewalks rather than on private property?

18 A Correct.

19 Q If those bus shelter signs were on a
20 parking lot rather than on the streets and they
21 were not illuminated, they would be permissible
22 and appropriate in these districts, correct?

23 A Yes.

24 Q And if those bus shelter signs were
25 on a parking lot and they were illuminated, as

THOMAS WARGO

THOMAS WARGO

they are, when they are in bus stations, they would not be appropriate in those districts?

A Yes.

Q What is it about the illumination of bus district signs that would make them permissible and appropriate on parking lots if not illuminated but impermissible and inappropriate in parking lots if they are illuminated in the manner that they are if they are in bus shelters?

A They could be illuminated on private property, just not directly illuminated.

Again, it gets to the issues of signage on buildings, the signage on private property, which is distinct from the signage on the public street.

Q I'm trying to take that out of the equation, by putting them on a parking lot. So, forget about the street for a second.

The same bus shelter signs, same size, same illumination, put them in a parking lot in an M1 district. We have a choice between turning the light bulb on or off. I think we will agree they would be legal if the light bulb was off and illegal if the light bulb was on?

THOMAS WARGO

1 THOMAS WARGO

2 A If the light bulb was illuminating
3 from the panel sign itself.

4 Q Which is the case for bus shelters?

5 A Yes.

6 Q Which is my question.

7 A Yes.

8 Q I'm asking does that make sense?

9 A Yes.

10 Q Why would it make sense to say that
11 internally illuminated bus shelter ads placed on a
12 parking lot would be legal in an M1 district if
13 the light happened to be out but illegal if the
14 light were turned on? Why is that?

15 A It's the visibility again, the
16 intensity of the light is making the signage more
17 visible.

18 Q C8 districts don't allow any
19 residential use, correct?

20 A Correct.

21 Q According to the Zoning Handbook
22 that you helped author, C8 districts are
23 incompatible with residential and retail uses,
24 correct?

25 A They are compatible with retail, a

EXHIBIT QQ

FILED UNDER SEAL PURSUANT TO THE MARCH 27, 2008
ORDER OF THE HONORABLE PAUL A. CROTTY